

REFERENCE TITLE: PSPRS; compensation; off-duty pay

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
Second Regular Session  
2006

# HB 2336

Introduced by  
Representative McClure

AN ACT

AMENDING SECTIONS 38-842 AND 38-843, ARIZONA REVISED STATUTES; RELATING TO  
THE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-842, Arizona Revised Statutes, is amended to  
3 read:

4 38-842. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Accidental disability" means a physical or mental condition which  
7 the local board finds totally and permanently prevents an employee from  
8 performing a reasonable range of duties within the employee's job  
9 classification and was incurred in the performance of the employee's duty.

10 2. "Accumulated contributions" means, for each member, the sum of the  
11 amount of the member's aggregate contributions made to the fund and the  
12 amount, if any, attributable to the employee's contributions prior to the  
13 member's effective date under another public retirement system, other than  
14 the federal social security act, and transferred to the fund minus the  
15 benefits paid to or on behalf of the member.

16 3. "Actuarial equivalent" means equality in present value of the  
17 aggregate amounts expected to be received under two different forms of  
18 payment, based on mortality and interest assumptions adopted by the fund  
19 manager. The fund manager may from time to time change the mortality and  
20 interest assumptions.

21 4. "Average monthly benefit compensation" means the result obtained by  
22 dividing the total compensation paid to an employee during a considered  
23 period by the number of months, including fractional months, in which such  
24 compensation was received. The considered period shall be the three  
25 consecutive years within the last twenty completed years of credited service  
26 which yield the highest average. In the computation under this paragraph a  
27 period of nonpaid or partially paid industrial leave shall be considered  
28 based on the compensation the employee would have received in the employee's  
29 job classification if the employee was not on industrial leave.

30 5. "Catastrophic disability" means a physical condition that is not an  
31 accidental disability, that the local board determines prevents the employee  
32 from totally and permanently engaging in any gainful employment and that  
33 results from a catastrophic physical injury incurred in the performance of  
34 the employee's duty.

35 6. "Certified peace officer" means a peace officer certified by the  
36 Arizona peace officers standards and training board.

37 7. "Claimant" means any member or beneficiary who files an application  
38 for benefits pursuant to this article.

39 8. "Compensation" means, for the purpose of computing retirement  
40 benefits, base salary, overtime pay, shift differential pay and holiday pay  
41 paid to an employee by the employer on a regular monthly, semimonthly or  
42 biweekly payroll basis and longevity pay paid to an employee at least every  
43 six months for which contributions are made to the system pursuant to section  
44 38-843, subsection D. COMPENSATION INCLUDES OFF-DUTY PAY IF THE PAY IS  
45 APPROVED BY THE EMPLOYER AND TRANSMITTED THROUGH THE EMPLOYER'S PAYROLL

1 **SYSTEM.** Compensation does not include, for the purpose of computing  
2 retirement benefits, payment for unused sick leave, payment in lieu of  
3 vacation, payment for compensatory time or any other payment for fringe  
4 benefits.

5 9. "Credited service" means the member's total period of service prior  
6 to the member's effective date of participation, plus those compensated  
7 periods of the member's service thereafter for which the member made  
8 contributions to the fund.

9 10. "Depository" means a bank in which all monies of the system are  
10 deposited and held and from which all expenditures for benefits, expenses and  
11 investments are disbursed.

12 11. "Effective date of participation" means July 1, 1968, except with  
13 respect to employers and their covered employees whose contributions to the  
14 fund commence thereafter, the effective date of their participation in the  
15 system is as specified in the applicable joinder agreement.

16 12. "Effective date of vesting" means the date a member's rights to  
17 benefits vest pursuant to section 38-844.01.

18 13. "Eligible child" means the unmarried child of a deceased member who  
19 is under the age of eighteen or a full-time student who is under the age of  
20 twenty-three or under a disability which began before the child attained the  
21 age of twenty-three and who remains a dependent of the surviving spouse or  
22 guardian.

23 14. "Eligible groups" means only the following who are regularly  
24 assigned to hazardous duty:

25 (a) Municipal police officers who are certified peace officers.

26 (b) Municipal fire fighters.

27 (c) Paid full-time fire fighters employed directly by a fire district  
28 organized pursuant to section 48-803 or 48-804 with three or more full-time  
29 fire fighters, but not including fire fighters employed by a fire district  
30 pursuant to a contract with a corporation.

31 (d) State highway patrol officers who are certified peace officers.

32 (e) State fire fighters.

33 (f) County sheriffs and deputies who are certified peace officers.

34 (g) Fish and game wardens who are certified peace officers.

35 (h) Police officers who are certified peace officers and fire fighters  
36 of a nonprofit corporation operating a public airport pursuant to sections  
37 28-8423 and 28-8424. A police officer shall be designated pursuant to  
38 section 28-8426 to aid and supplement state and local law enforcement  
39 agencies and a fire fighter's sole duty shall be to perform fire fighting  
40 services, including services required by federal regulations.

41 (i) Police officers who are certified peace officers and who are  
42 appointed by the Arizona board of regents.

43 (j) Police officers who are certified peace officers and who are  
44 appointed by a community college district governing board.

1 (k) State attorney general investigators who are certified peace  
2 officers.

3 (l) County attorney investigators who are certified peace officers.

4 (m) Police officers who are certified peace officers and who are  
5 employed by an Indian reservation police agency.

6 (n) Fire fighters who are employed by an Indian reservation fire  
7 fighting agency.

8 (o) Police officers who are certified peace officers and who are  
9 appointed by the department of administration.

10 (p) Department of liquor licenses and control investigators who are  
11 certified peace officers.

12 (q) Arizona department of agriculture officers who are certified peace  
13 officers.

14 (r) Arizona state parks board rangers and managers who are certified  
15 peace officers.

16 (s) County park rangers who are certified peace officers.

17 15. "Employee" means any person who is employed by a participating  
18 employer and who is a member of an eligible group but does not include any  
19 persons compensated on a contractual or fee basis. If an eligible group  
20 requires certified peace officer status and at the option of the local board,  
21 employee may include a person who is training to become a certified peace  
22 officer.

23 16. "Employers" means:

24 (a) Cities contributing to the fire fighters' relief and pension fund  
25 as provided in sections 9-951 through 9-971 or statutes amended thereby and  
26 antecedent thereto, as of June 30, 1968 on behalf of their full-time paid  
27 fire fighters.

28 (b) Cities contributing under the state police pension laws as  
29 provided in sections 9-911 through 9-934 or statutes amended thereby and  
30 antecedent thereto, as of June 30, 1968 on behalf of their municipal  
31 policemen.

32 (c) The state highway patrol covered under the state highway patrol  
33 retirement system.

34 (d) The state, or any political subdivision thereof, including but not  
35 limited to towns, cities, fire districts, counties and nonprofit corporations  
36 operating public airports pursuant to sections 28-8423 and 28-8424, which has  
37 elected to participate in the system on behalf of an eligible group of public  
38 safety personnel pursuant to a joinder agreement entered into after July 1,  
39 1968.

40 (e) Indian tribes which have elected to participate in the system on  
41 behalf of an eligible group of public safety personnel pursuant to a joinder  
42 agreement entered into after July 1, 1968.

43 17. "Fund" means the public safety personnel retirement fund, which is  
44 the fund established to receive and invest contributions accumulated under  
45 the system and from which benefits are paid.

1       18. "Fund manager" means the fund manager of the system, who are the  
2 persons appointed to invest and operate the fund.

3       19. "Local board" means the retirement board of the employer, who are  
4 the persons appointed to administer the system as it applies to their members  
5 in the system.

6       20. "Member" means any employee who meets all of the following  
7 qualifications:

8       (a) Who is either a full-time paid municipal police officer, a  
9 full-time paid fire fighter, a law enforcement officer who is employed by the  
10 state including the director thereof, a state fire fighter who is primarily  
11 assigned to fire fighting duties, a fire fighter or police officer of a  
12 nonprofit corporation operating a public airport pursuant to sections 28-8423  
13 and 28-8424, all ranks designated by the Arizona law enforcement merit system  
14 council, a state attorney general investigator who is a certified peace  
15 officer, a county attorney investigator who is a certified peace officer, a  
16 police officer who is appointed by the department of administration and who  
17 is a certified peace officer, a department of liquor licenses and control  
18 investigator who is a certified peace officer, an Arizona department of  
19 agriculture officer who is a certified peace officer, an Arizona state parks  
20 board ranger or manager who is a certified peace officer, a county park  
21 ranger who is a certified peace officer, a person who is a certified peace  
22 officer and who is employed by an Indian reservation police agency, a fire  
23 fighter who is employed by an Indian reservation fire fighting agency or an  
24 employee included in a group designated as eligible employees under a joinder  
25 agreement entered into by their employer after July 1, 1968 and who is or was  
26 regularly assigned to hazardous duty.

27       (b) Who, on or after the employee's effective date of participation,  
28 is receiving compensation for personal services rendered to an employer or  
29 would be receiving compensation except for an authorized leave of absence.

30       (c) Whose employment with an employer commenced prior to attainment of  
31 age fifty.

32       (d) Whose customary employment is at least forty hours per week and  
33 for more than six months in a calendar year.

34       (e) Who has not attained age sixty-five prior to the employee's  
35 effective date of participation or who was over age sixty-five with  
36 twenty-five years or more of service prior to the employee's effective date  
37 of participation.

38       21. "Normal retirement date" means the first day of the calendar month  
39 immediately following an employee's completion of twenty years of service or  
40 the employee's sixty-second birthday and the employee's completion of fifteen  
41 years of service.

42       22. "Ordinary disability" means a physical condition which the local  
43 board determines will prevent an employee totally and permanently from  
44 performing a reasonable range of duties within the employee's department or a

1 mental condition which the local board determines will prevent an employee  
2 totally and permanently from engaging in any substantial gainful activity.

3 23. "Pension" means a series of monthly amounts which are payable to a  
4 person who is entitled to receive benefits under the plan.

5 24. "Regularly assigned to hazardous duty" means regularly assigned to  
6 duties of the type normally expected of municipal police officers, municipal  
7 or state fire fighters, eligible fire district fire fighters, state highway  
8 patrol officers, county sheriffs and deputies, fish and game wardens, fire  
9 fighters and police officers of a nonprofit corporation operating a public  
10 airport pursuant to sections 28-8423 and 28-8424, police officers who are  
11 appointed by the Arizona board of regents or a community college district  
12 governing board, state attorney general investigators who are certified peace  
13 officers, county attorney investigators who are certified peace officers,  
14 police officers who are appointed by the department of administration and who  
15 are certified peace officers, department of liquor licenses and control  
16 investigators who are certified peace officers, Arizona department of  
17 agriculture officers who are certified peace officers, Arizona state parks  
18 board rangers and managers who are certified peace officers, county park  
19 rangers who are certified peace officers, police officers who are certified  
20 peace officers and are employed by an Indian reservation police agency or  
21 fire fighters who are employed by an Indian reservation fire fighting agency.  
22 Those individuals who are assigned solely to support duties such as  
23 secretaries, stenographers, clerical personnel, clerks, cooks, maintenance  
24 personnel, mechanics and dispatchers are not assigned to hazardous duty  
25 regardless of their position classification title. Since the normal duties  
26 of municipal police officers, municipal or state fire fighters, eligible fire  
27 district fire fighters, state highway patrol officers, county sheriffs and  
28 deputies, fish and game wardens, fire fighters and police officers of a  
29 nonprofit corporation operating a public airport pursuant to sections 28-8423  
30 and 28-8424, police officers who are appointed by the Arizona board of  
31 regents or a community college district governing board, state attorney  
32 general investigators who are certified peace officers, county attorney  
33 investigators who are certified peace officers, police officers who are  
34 appointed by the department of administration and who are certified peace  
35 officers, department of liquor licenses and control investigators who are  
36 certified peace officers, Arizona department of agriculture officers who are  
37 certified peace officers, Arizona state parks board rangers and managers who  
38 are certified peace officers, county park rangers who are certified peace  
39 officers, police officers who are certified peace officers and are employed  
40 by an Indian reservation police agency and fire fighters who are employed by  
41 an Indian reservation fire fighting agency are constantly changing, questions  
42 as to whether a person is or was previously regularly assigned to hazardous  
43 duty shall be resolved by the local board on a case-by-case basis.  
44 Resolutions by local boards are subject to rehearing and appeal.

1       25. "Retirement" means termination of employment after a member has  
2 fulfilled all requirements for a pension. Retirement shall be considered as  
3 commencing on the first day of the month immediately following a member's  
4 last day of employment or authorized leave of absence, if later.

5       26. "Service" means the last period of continuous employment of an  
6 employee by the employers prior to the employee's retirement or the  
7 employee's sixty-fifth birthday, whichever first occurs, except that if such  
8 period includes employment during which the employee would not have qualified  
9 as a member had the system then been effective, such as employment as a  
10 volunteer fire fighter, then only twenty-five per cent of such noncovered  
11 employment shall be considered as service. Any absence which is authorized  
12 by an employer shall not be considered as interrupting continuity of  
13 employment if the employee returns within the period of authorized absence.  
14 Transfers between employers also shall not be considered as interrupting  
15 continuity of employment. Any period during which a member is receiving sick  
16 leave payments or a temporary disability pension shall be considered as  
17 service. Any period during which a person was employed as a full-time paid  
18 fire fighter by a fire district pursuant to a contract with a corporation  
19 within that fire district shall be considered as service if it is part of the  
20 person's last period of continuous employment with that corporation in that  
21 fire district and the fire district has elected to treat the period as  
22 service in its applicable joinder agreement. Any reference in this system to  
23 the number of years of service of an employee shall be deemed to include  
24 fractional portions of a year.

25       27. "State" means the state of Arizona, including any department,  
26 office, board, commission, agency or other instrumentality of the state.

27       28. "System" means the public safety personnel retirement system  
28 established by this article.

29       29. "Temporary disability" means a physical or mental condition which  
30 the local board finds totally and temporarily prevents an employee from  
31 performing a reasonable range of duties within the employee's department and  
32 which was incurred in the performance of the employee's duty.

33       Sec. 2. Section 38-843, Arizona Revised Statutes, is amended to read:

34       38-843. Contributions

35       A. Each employer who participates in the system on behalf of a group  
36 of employees who were covered under a prior public retirement system, other  
37 than the federal social security act, shall transfer all securities and  
38 monies attributable to the taxes and contributions of the state other than  
39 the state contribution to social security, the employer and the employees for  
40 the covered group of employees under the other system, such transfer to be  
41 made to the fund subject to all existing liabilities and on or within sixty  
42 days following the employer's effective date. All monies and securities  
43 transferred to the fund shall be credited to the employer's account in the  
44 fund. A record of the market value and the cost value of such transferred  
45 contributions shall be maintained for actuarial and investment purposes.

1           B. As determined by actuarial valuations reported to the employer and  
2 the local board by the fund manager, each employer shall make level per cent  
3 of compensation contributions sufficient under such actuarial valuations to  
4 meet both the normal cost plus the actuarially determined amount required to  
5 amortize the unfunded accrued liability over a rolling twenty year period  
6 commencing on July 1, 1997, except that, beginning with fiscal year  
7 2006-2007, the employer contribution rate shall not be less than five per  
8 cent of compensation. An employer shall have the option of paying a higher  
9 level per cent of compensation thereby reducing its unfunded past service  
10 liability. An employer shall also have the option of increasing its  
11 contributions in order to reduce the contributions required from its members  
12 under subsection C, except that if an employer elects this option the  
13 employer shall pay the same higher level percentage contribution for all  
14 members of the eligible group. During a period when an employee is on  
15 industrial leave and the employee elects to continue contributions during the  
16 period of industrial leave, the employer shall make the contributions based  
17 on the compensation the employee would have received in the employee's job  
18 classification if the employee was in normal employment status. All  
19 contributions made by the employers and all state taxes allocated to the fund  
20 shall be irrevocable and shall be used to pay benefits under the system or to  
21 pay expenses of the system and fund. The minimum employer contribution that  
22 is paid and that is in excess of the normal cost plus the actuarially  
23 determined amount required to amortize the unfunded accrued liability as  
24 calculated pursuant to this subsection shall be used to reduce future  
25 employer contribution increases and shall not be used to pay for an increase  
26 in benefits that are otherwise payable to members. The fund manager shall  
27 separately account for these monies in the fund. Forfeitures arising because  
28 of severance of employment before a member becomes eligible for a pension or  
29 any other reason shall be applied to reduce the cost of the employer, not to  
30 increase the benefits otherwise payable to members.

31           C. Each member, throughout the member's period of service from the  
32 member's effective date of participation, shall contribute to the fund an  
33 amount equal to 7.65 per cent of the member's compensation, except as  
34 provided in subsection B. During a period when an employee is on industrial  
35 leave and the employee elects to continue contributions during the period of  
36 industrial leave, the employee shall make the employee's contribution based  
37 on the compensation the employee would have received in the employee's job  
38 classification if the employee was in normal employment status.  
39 Contributions of members shall be required as a condition of employment and  
40 membership in the system and shall be made by payroll deductions. Every  
41 employee shall be deemed to consent to such deductions. Payment of an  
42 employee's compensation, less such payroll deductions, shall constitute a  
43 full and complete discharge and satisfaction of all claims and demands by the  
44 employee relating to remuneration for the employee's services rendered during



1 the period covered by the payment, except with respect to the benefits  
2 provided under the system.

3 D. Each employer shall transfer to the fund manager the employer and  
4 employee contributions provided for in subsections B, ~~and C~~ AND E within ten  
5 working days after each payroll date. Contributions transferred after that  
6 date shall include a penalty of ten per cent per annum, compounded annually,  
7 for each day the contributions are late, such penalty to be paid by the  
8 employer. Delinquent payments due under this subsection, together with  
9 interest charges as provided in this subsection, may be recovered by action  
10 in a court of competent jurisdiction against an employer liable for the  
11 payments or, at the request of the fund manager, may be deducted from any  
12 other monies including excise revenue taxes payable to such employer by any  
13 department or agency of this state.

14 E. THE AMOUNTS PRESCRIBED BY SUBSECTIONS B AND C SHALL BE CONTRIBUTED  
15 FROM OFF-DUTY PAY ONLY IF THE EMPLOYEE AGREES THAT BOTH THE EMPLOYER AND  
16 EMPLOYEE CONTRIBUTIONS BE DEDUCTED FROM THE OFF-DUTY PAY.